

APPEAL NO. 022744
FILED DECEMBER 12, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 9, 2002. The hearing officer determined that the appellant (claimant) had not sustained a compensable injury on _____; that because the claimant did not have compensable injury, he did not have disability; and that the respondent (carrier) second Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) was based on newly discovered evidence that could not reasonably have been discovered earlier, and that the carrier's defense on compensability is not limited to the defense listed on the first TWCC-21.

The claimant appeals, arguing that he has sustained a compensable injury in the form of an aggravation of a preexisting condition; that he did have disability; and that, because the carrier failed to conduct a thorough investigation after its initial denial of compensability (within seven days as provided for in Section 409.021), the carrier should not be allowed to amend "its defenses to a compensable injury." The carrier responds, urging affirmance.

DECISION

Affirmed.

The hearing officer recites a detailed summary of the evidence and her understanding of the law. We have reviewed the complained of-determinations and hold that the hearing officer did not err in her determinations and application of the law.

We would further note that the carrier's first TWCC-21, which the parties and hearing officer appear to agree was timely filed within the requirements of Section 409.021, as interpreted by Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002), has as justification of its refusal to pay benefits:

Carrier denies claimant sustained a compensable injury within course and scope of employment. Carrier denies claimant sustained disability within course and scope of employment. Injury, if any, was caused by non-occupational conditions. No medical of a casual connection between work and the claimant's condition. No work-related conditions involved. This is a heart attack case that does not meet the three-part test for compensability under Section 408.008 Texas. Lab. Code. Claimant's injury, if occupation, resulted from ordinary disease of life or idiopathic in nature.

The claimant's subsequent allegation that he had not suffered a heart attack but had in fact sustained an aggravation of preexisting shoulder condition constitutes newly

discovered evidence which would allow the carrier to amend its defense. See Section 409.021(d) and 409.022(b).

We conclude that there is sufficient legal and factual support for the hearing officer's decision. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge